

Claims 11 and 14 have been rejected under 35 USC §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards on the invention.

These claims have been amended in consideration of the Examiner's comments in order to define the elements more specifically. As amended, these claims are now submitted to define this invention with sufficient particularity and distinctiveness to be patentable to applicant.

Claims 1-6 and 11-16 have been rejected under 35 USC §103(a) as being unpatentable over Scwemberger et al '292. This rejection is respectfully traversed.

These claims, which have been amended merely to recite more specifically the structure that is inherently defined thereby, now particularly recite "a second lumen having an open distal end positioned intermediate the proximal and distal ends of the first lumen for housing a surgical instrument therein to protrude from the open distal end for performing surgical procedures on tissue viewed through the transparent tip". In addition, the dependent claims are further restricted by specific recitations of configurations of the second lumen to accommodate surgical scissor, or other surgical instruments capable of protruding from the open distal end of the second lumen that is located proximal the distal end of the first lumen. Also, these dependent claims variously specify surgical instruments disposed within the second lumen in the defined structure of the elongated cannula.

These aspects of the claimed invention facilitate manipulation of surgical instruments through the open distal end of the second lumen of the cannula within the field of endoscopic visualization through the transparent tip at the distal end of the first lumen.

These aspects of the claimed invention are not shown or even suggested by Scwemberger et al '292 which merely relies upon a transparent tip having cutting blades thereon to penetrate tissue. As the Examiner correctly observes, the open distal end of the second lumen appears from the drawings to be positioned intermediate the proximal and distal ends of the first lumen. However, there is no hint or suggestion in this reference of extending another surgical instrument through this open distal end, or even accommodating another surgical instrument within the second lumen (other than the body containing a first lumen), to be manipulated within the field of visualization through the transparent tip, in the manner as claimed by applicant. At best, this reference merely houses the body (containing a first lumen) within a second lumen that ends at the open distal end thereof, which is proximal the tip on the first lumen. This reference is therefore deficient of disclosure of applicant's invention as specifically claimed, and provides inadequate factual basis from which a proper determination of obviousness can be made. It is therefore respectfully submitted that claims 1-6 and 11-16 as amended herein are now patentably distinguishable over the cited art.

Claims 7-10 have been rejected under 35 USC §103(a) as being unpatentable over Scwemberger et al '292 in view of Wilk et al '586. This rejection is respectfully traversed.

These dependent claims are further limited, for example, by the specific recitations of “a flexible hood having an open proximal end coupled to the distal end of the second lumen and operable in a transition orientation responsive to a surgical instrument being retracted within the second lumen proximally from the transparent tip, and in an expanded orientation in response to extension therethrough of a surgical instrument projecting forward from the open distal end of the second lumen”. In addition, these dependent claims also distinctly define the characteristics and positioning of the hood.

These aspects of the claimed invention are not shown or even suggested by the cited references considered either alone or in the combination proposed by the Examiner. Specifically, the disclosure of Scwemberger et al '292 is deficient, as discussed in the above remarks, regarding no second instrument in another lumen having an open distal end proximal the transparent tip at the end of the first lumen, and is deficient regarding any configuration of a flexible hood at such open distal end. Nor does Wilk et al '586 disclose any such first and second lumens as claimed, with any configuration of a flexible hood over a second one of such lumens. At best, this reference is understood to cover the entire distal end of the body with an elastic membrane that then is shaped and secured about a single shaft

which penetrates the membrane. Thus, combining the disclosures of these references in the manner as proposed by the Examiner, with no instruction or motivation found in the cited art for doing so, might yield a tapered transparent tip at a distal end of a first lumen, as in Scwemberger et al '292, covered over by an elastic membrane but with no second instrument lumen having an open distal end covered by a flexible hood. Such combination of the references nevertheless fails to establish even a *prima facie* basis from which a proper determination of obviousness can be made. It is therefore respectfully submitted that the dependent claims 7-10 as proposed to be amended herein are now patentably distinguishable over the cited art.

Entry of this amendment, which is submitted to place this application in condition for allowance, is respectfully requested. In the event the Examiner elects to continue the rejections, it is respectfully requested that this amendment be entered in order to clarify the issues for appeal.

Reconsideration and allowance of claims 1-16 are solicited.

Respectfully submitted,  
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ATTACHMENT: CLAIMS REVISIONS



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### CLAIMS REVISIONS

Please amend claims 1, 5, 7, 9, 11, 13-16 as follows:

1. (Amended) Surgical apparatus comprising an elongated cannula further comprising:

a first lumen extending within the cannula between proximal and distal ends thereof for housing an endoscope therein;

a transparent tip disposed at the distal end of the first lumen for providing dissection and endoscopic visualization therethrough; and

a second lumen having an open distal end positioned intermediate the proximal and distal ends of the first lumen for housing a surgical instrument therein to protrude from the open distal end for performing surgical procedures on tissue viewed through the transparent tip. [the second lumen having an open distal end positioned intermediate the proximal and distal ends of the first lumen.]

5. (Twice Amended) The apparatus of claim 3 wherein the second lumen is configured to house therein blades of surgical scissors that curve toward the transparent tip to provide endoscopic visualization of the blades upon extension from the open distal end of the second lumen.

7. (Amended) The apparatus of claim 1 further comprising:

a flexible hood having an open proximal end coupled to the distal end of the second lumen and operable in a transition orientation responsive to [the] a surgical instrument being retracted within the second lumen proximally from the transparent tip, and in an expanded orientation in response to extension therethrough of a surgical instrument projecting forward from the open distal end of the second lumen.

9. (Amended) The apparatus of claim 7 wherein the distal end of the hood extends substantially to [the] a proximal edge of the [tapered] transparent tip.

11. (Twice Amended) The apparatus of claim 1 [comprising] in combination with a tissue bisector as a surgical instrument disposed within the second lumen.

13. (Amended) The apparatus of claim 1 wherein the cannula includes a transition contour near the location therealong at which the first lumen extends

beyond the open distal end of the second lumen to reduce axial force required to advance the cannula through tissue.

14. (Twice Amended) The apparatus of claim 1 [comprising] in combination with a retractor having a curved distal end [for cradling a vein] as a surgical instrument slidably disposed within the second lumen for cradling a vein in the curved distal end as extended distally from the open distal end of the second lumen.

15. (Amended) The apparatus of claim 1 wherein the cannula comprises another lumen for housing therein a dissection loop instrument including [one or more stems] at least one stem extending through another [other] lumen [or lumens] and including a curved element attached to a distal end of the stem [or stems].

16. (Amended) The apparatus of claim 15 wherein the cannula [has] includes a storage groove disposed near the open distal end of the second lumen and configured to store a dissection loop including the curved element of the dissection loop instrument.

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